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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
CIVIL SUIT NO. 899 OF 2020**

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**BURHANI ENGINEERING & CYLINDER
MANUFACTURING INDUSTRY LIMITED**

] PLAINTIFF

VERSUS

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SAFE GAZ (U) LIMITED

] DEFENDANT

Before: Hon. Justice Thomas Ocaya O.R

JUDGMENT

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Background

The Plaintiff, a limited liability Company filed this suit against the Defendant for breach of Contract and recovery of US \$17,463.36, Interest on the outstanding amount, General Damages, and Costs of the Suit.

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The Plaintiff contended that in 2016, it and the Defendant entered into a business arrangement wherein the Plaintiff supplied Defendant with gas cylinders and Defendant in turn had to pay for the said gas cylinders and on occasion would provide gas.

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Upon entering the said arrangement, the Plaintiff opened a transaction account on which Defendant would deposit money owed to Plaintiff and the transaction went on overtime where discussions were conducted on phone and emails upon delivery of the cylinders and Plaintiff sent Defendant an invoice duly agreed upon by the Parties.



5 In 2019, the parties entered their last transaction to provide gas cylinders to the Defendant. In the transaction, the parties agreed that Plaintiff would provide Defendant with 2,000(two thousand) pieces of 6kg gas cylinders which were delivered on the 29th of October 2019 and Defendant would pay US \$10,000 as a down payment and the balance of US \$23,040 inclusive of VAT would be paid within 45 days
10 from the date of the last delivery.

Plaintiff made demands for the payment of the outstanding balance to no avail, however later Plaintiff reconciled its accounts with Defendant that is inclusive of past transactions which has brought the sum of outstanding balance to date to US
15 \$17,463.36 which was communicated to Defendant who has since failed to pay.

The Defendant contends that it entered into a business arrangement with the Plaintiff to supply gas cylinders since 2016 and settled all arrears for the cylinders that were supplied by the Plaintiff during that period.

20 That on the 14th August, 2019, the Defendant agreed with the Plaintiff to supply and or provide the Defendant on special offer and made a quotation for the Defendant. On the 15th August, 2019 the Defendant's General Manager replied via email to the Plaintiff's quotation for the supply of 2000 pieces of 6kg gas cylinders at the rate of
25 US 14 \$ totaling US 33,040\$ VAT inclusive with conditions that the products are painted and branded in the color of the Defendant.

That the Plaintiff did not agree with the Defendant's conditions and proposed for an advance of US 10,000\$ before delivery and the balance to be settled within 45 days
30 and not 2 months as proposed by the Defendant. However, the Plaintiff later agreed to supply the gas cylinders to Defendant upon which Defendant made payments in four installments of US \$8,000 on 18/10/2019, US \$2,000 on 18/10/2019, US \$3,500



5 on the 22/11/2019, US \$2,000 on the 14/3/2020, US \$2,000 on the 17/3/2020 all totaling US \$18,500 leaving a balance of US \$14,540.

Defendant demanded receipts and the tax invoice on the amount paid on supplies for VAT purposes by Plaintiff ignored Defendant's request and the Defendant
10 subsequently found out that 172 cylinders were defective and as a result 54 cylinders were returned to Plaintiff and 188 cylinders were still at the Defendant's plant pending issuance of a credit note for the 172 cylinders amounting to US \$2,841. Defendant further avers that in 2017, she supplied gas to Plaintiff worth UGX 5,400,000/= an equivalent of US \$1,500 which remains unpaid by Plaintiff despite
15 Defendant's demands.

The Defendant further contended that it acknowledges US \$10,199 as the balance outstanding for the supply of the gas cylinders which the Defendant is willing to pay to the Plaintiff upon issuance of the credit note for the 172 cylinders and the tax
20 invoice for monies earlier received for reconciliations purposes.

The parties initially filed separate Scheduling Memorandum. They subsequently upon guidance by court filed a Joint Scheduling Memorandum and agreed on the for following facts;

- 25 i) That they entered into an arrangement of supply of gas cylinders where the Defendant was supplied on credit for payment on a later date,
ii) The Plaintiff upon entering the said arrangement opened on which the Defendant would deposit sums owed to the Plaintiff and
iii) The said transactions which occurred over time were discussed on phone
30 and email.

The rest of the facts remain disputed.



5 **Representation:**

The Plaintiff was represented by the law firm of Kaggwa & Kaggwa Advocates and the Defendant was represented by the law firm of Murungi, Kairu & Co. Advocates.

10 **Issues:**

The following issues were arrived at for determination.

1. Whether the Plaintiff is entitled to payment from the Defendant?
2. What are the remedies available?

15 **Evidence:**

The Plaintiff adduced one witness, Mr. Mustafa Alavi, the General Manager of the Plaintiff Company who led his evidence in chief by witness statement which was admitted in court record PW1. Plaintiff filed a trial bundle on record on the 14th of November, 2022 and exhibited 7 documents, namely, A copy of PW 1's Appointment Letter (PEX 1), A copy of the Transaction Account (PEX 2), Copies of Invoices (PEX 3),
20 Copies of delivery notes (PEX 4), Copy of the Reconciled Account (PEX 5), Copies of printed Emails (PEX 7), A copy of a Demand Letter dated 26th August,2020.

The Defendant filed its trial bundle on record on the 02nd November 2022 and it had
25 6 documents namely, a witness statement by Isaack Abdikadir, a witness statement by Ismeal Muyika, a quotation, Delivery notes by Plaintiff, a Delivery note by the Defendant and Printed copies of email correspondences. However, neither the Defendant nor its advocate appeared at the hearing of this case to tender in the documents attached to the Written Statement of Defense.

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On the 25th/04/2023 Counsel for the Defendant wrote to court seeking an adjournment knowing very well it is not acceptable to adjourn court matters by way



5 of letters; Court reluctantly adjourned the matter and directed counsel for the Plaintiff to serve the Defendant with hearing notice for the date of 23rd/05/2023.

On the scheduled adjourned hearing date, counsel to the Plaintiff brought to court's attention that the Defendant was served with hearing notice and an affidavit of
10 service was filed in court and still neither the Defendant nor its Advocate appeared. Counsel went on to pray to proceed ex parte under Order 9 Rule 20(1) a of the Civil Procedure Rules which was granted by the Court and the Plaintiff thereafter closed its case.

15 Order 9 Rule 20(1) a States that

(1) Where the Plaintiff appears and the Defendant does not appear when the suit is called on for hearing—

(a) if the court is satisfied that the summons or notice of hearing was duly served, it may proceed ex parte.

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Court thereafter fixed the matter for judgment and Court has taken into consideration the Plaintiffs evidence the Defendant's Written Statement of Defense while arriving at a decision.

Analysis:

25 As noted, Defendant did not appear at the hearing in this matter and the court proceeded to hear the Plaintiff's case and the evidence adduced.

Issue 1: Whether the Plaintiff is entitled to payment from the Defendant?

In Civil proceedings, the burden of proof lies upon the party who alleges and said party must prove their case on a balance of probabilities if they are to obtain the

remedies sought. see *Lord Denning in Miller versus Minister of Pensions (1947)2 ALL ER 372 at page 373. See Section 101 and Section 103 of the Evidence Act.*

When a Plaintiff has led evidence establishing his or her claim, he/she is said to have executed the legal burden. The evidential burden thus shifts to the Defendant to rebut the plaintiff's claims.

PW 1 in paragraphs 2, 3, and 4 of his evidence in chief stated that in 2016 the parties entered into a mutual understanding wherein, the Plaintiff provided the Defendant with gas cylinders and Defendant in turn had to pay for the said gas cylinders by way of depositing the sums owed and recorded onto the transaction account, he adduced PEX 2.

Further, the said transactions happened overtime and were discussed over the phone or email upon, delivery of the cylinders, the Plaintiff duly served on the Defendant an invoice duly agreed upon by the parties.

Court has taken notice in paragraphs 6 and 9 of PW1's evidence in chief where he stated that in 2019, they delivered 2,000 Pieces of 6kg gas cylinders on 25th October, and upon reconciliation of accounts with the Defendants, the sum outstanding is US 17,463.36 \$.

It is the same amount PW 1 confirmed to court during cross-examination by Court on the 23rd May 2023.

The Defendant despite not appearing to cross-examine the veracity of the Plaintiff's assertions, did contend in their Written Statement Defense that the parties indeed entered into an understanding and further contends in paragraph 9 that the Plaintiff's entitlement to any of the relief sort is denied and placed the Plaintiff to strict proof thereof.



It is trite law that parties are bound by their pleadings and it forms part of the record and moreover, court itself is also bound by what the parties have stated in their pleadings as to the facts relied on by them. See Order 6 Rule 7 and parted ***Struggle Ltd vs. Pan African Insurance Co. Ltd. (1990) ALR 46 - 47.***

Defendant denied the Plaintiff's allegations on the amount claimed except for agreeing that indeed they had a business arrangement in the nature and terms same as that described by Plaintiff. The Simple interpretation of that is that there existed a contract relationship between the Parties.

Whereas the Defendant did put the Plaintiff to strict proof, the Plaintiff adduced evidence of a witness who testified on oath that the amount due to the Defendant is US 17,463.36\$.

It was imperative for the Defendant to enter appearance and dispute the Plaintiff's claim through cross-examination of PW 1 and equally place its claim for the credit demand along with the evidence to prove the same.

Nonetheless, in determining all issues, the court bears in mind the principle of law that ***"the Plaintiff has to prove his case on the balance of probabilities even where the matter is not defended"***. See ***Section 101, 102, and 103 of the Evidence Act.***

The Plaintiff adduced its evidence of the Transaction Account, copies of the invoices sent to Defendant, copies of delivery notes of the tax invoices to Defendant and the Reconciled Accounts plus the demand note dated 26th August 2020 which all show a trail of a business relationship followed by delivery of the subjects and part payments made together with reconciled accounts for clarity and then the demand for outstanding money owed.

It is also the principle that "where payments were indeed delayed and the figure was pleaded and has not been challenged by the Defendant, the Plaintiff had proved the



claim to the satisfaction of the court". – See **Roko Construction Co. vs. Attorney General HCCS 517/2008.**

Therefore, in the absence of any evidence to the contrary disproving Plaintiff's claims; I find that Plaintiff has proved its case on the balance of probabilities that it is more likely than not that Defendant owes Plaintiff the suit amount claimed of US \$ 17,463.36.

I find issue 1 in the affirmative for the Plaintiff.

Issue 2: What are the remedies available?

5 Plaintiff prayed for Orders of Recovery of the Outstanding balance, General Damages, Interest of 15% on the Outstanding balance, and Costs of the suit.

Recovery of the Outstanding sum of US \$ 17,463.36

10 Having found issue 1 for the Plaintiff, the Plaintiff company is entitled to recovery of the outstanding sum of US \$17,463.36 from the Defendant.

General Damages:

15 In **Principles Governing the Award of Damages in Civil Cases, A paper by Bart Katurabe [Justice Emeritus]** stated on General damages that, according to Lord McNaughten in the oft-cited case of **Stroms V. Hutchinson [1905] AC 515**, are such as the law will presume to be the direct natural or probable consequence of the act complained of.

20 As it is trite law that the award of General Damages is at the Court's discretion and its intention is to compensate the aggrieved party for the inconveniences suffered as a result of the Defendant's actions.



5 Court has also severally held that -To be eligible for general damages, the party should have suffered loss or inconvenience to justify the award of damage. – See **Musisi Edward vs. Babihuga Hilda [2007] HCB 84.**

10 In the present case, Defendant admitted having received the gas cylinders, and by making part payment of the amount agreed coupled with the accounts reconciled, Plaintiff has shown that Defendant is aware of the money owed but has been adamant in remitting it thereby forcing the Plaintiff to undertake the recourse in litigation since 2020 a period of 4 years to date which has in my view shown the inconveniences the Plaintiff has gone having had his potential capital held up given the nature of its
15 business is to lend goods for later payment.

The purpose of contractual damages is to place the party which suffered the loss by reason of the breach, in the same position he/she would have been had the contract been properly performed. – **Robinson vs. Harman [1848] Exch 850.**

20 The Plaintiff is therefore awarded US \$5,239.62 as general damages for the inconvenience occasioned to it by Defendant Company.

Interests:

25 **Section 26 (2) of the Civil Procedure Act**, provides for the awarding of interests by court at its discretion.

Bart Katurabe [*Chief Justice Emeritus*] in Principles Guiding awarding of Damages(supra) quoted a passage of Oder, JSC in **Premchandra Shenoï & Anor v. Maximov Oleg Petrovich, Supreme Court Civil Appeal No. 9 of 2003**

30 “In considering what rate of interest the respondent should have been awarded in the instant case, I agree that the principle applied by this Court in SIETCO v. NOBLE



5 *BULDERS (U) Ltd Supreme Court Civil Appeal No. 31 of 1995 to the effect that it is a matter of the Court's discretion is applicable. The basis of awards of interest is that the Defendant has taken and used the plaintiff's money and benefited.*

In the instant case, the Defendant in failing to pay the outstanding balance likely benefited from keeping the money in one way or another, and having considered the
10 inflation rate; I accordingly award interest of 12% Per annum on the outstanding sum of US \$ 17,463.36 from the date of filing this suit until payment in full.

Further under section 26(2) of the Civil Procedure Act, I award interest of 6% Per annum on the General Damages of US \$ 5,239.62 from the date of this judgment until payment in full.

15 Costs:

As a rule of law, costs ordinarily follow the event and a successful litigant receives his or her costs in the absence of special circumstances justifying some other order. Where the successful party has been guilty of some misconduct, an order of costs may not be granted. **Section 27(2) Civil Procedure Act, Harry Ssemu v Kambagambire**
20 **David HCCS 408/2014, Iyamuleme David vs. AG SCCA NO.4 of 2013, Anglo-Cyprian Trade Agencies Ltd v. Paphos Wine Industries Ltd, [1951] 1 All ER 873.**

The Plaintiff filed this suit for the recovery of US \$ 17,463.36 which had it not been for non-payment by the Defendant, this litigation would not have arisen and, having found for the Plaintiff, I equally award it the Costs of the suit.

25 **Conclusion:**

I accordingly make the following orders,

- a) The Plaintiff is entitled to recover the outstanding balance of US \$17,463.36.
- b) The Plaintiff is awarded General Damages of US \$5,239.62

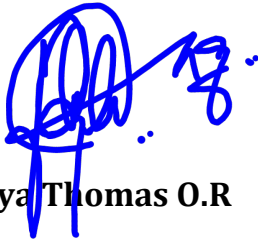


- 5 c) The Plaintiff is awarded interest of 12% on (a) per annum from the date of filing this suit until payment in full.
- d) The Plaintiff is further awarded interest of 6% on (b) per annum from the date of this judgment until payment in full.
- e) The Plaintiff is awarded the costs of the suit.

10 I so order.

Delivered electronically this 30th day of November 2023 and uploaded on ECCMIS.

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Ocaya Thomas O.R

Judge,

30th November, 2023

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